

There Must Be a Basis in the Art for Combining or Modifying References

MPEP § 2143.01 provides:

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

Applicant respectfully submits that there is no teaching or suggestion in Cunliffe to support the Examiners contention that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have "... modified the cap of Cunliffe by either making the different segments of the headband the same color or different colors to enhance the aesthetic appeal of the headband." Cunliffe discloses a one-sizes-fits-all adjustable cap. It has a crown made of triangular gore sections and a band stitched to the lower peripheral edge of the crown. The band is not visible when worn. There is no motivation to create a multicolored band if it can only be seen when the cap is removed. There is motivation or reason to make the gores of the crown the same color or different colors. Cunliffe does not disclose functions or structure intended to increase aesthetic appearance of the adjustable cap. There is no reason or suggestion from Cunliffe to suggest why one of ordinary skill in the art would modify Cunliffe as suggested by the Examiner.

Remarks/Arguments

Claims 1-19 remain in this application.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

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Respectfully submitted,



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